

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

MONTANA POWER COMPANY

Employer

and

Case 19-RC-13903

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION 44, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in the operation of a public utility providing electricity and gas services in the State of Montana. The employees involved herein are employed in the Employer's facility located

¹ The parties filed briefs, which have been considered.

² Board exhibits 1(a) through 1(d), 1(a) being the original petition filed in these proceedings, received into the record by the Hearing Officer, were not received in the Regional Office along with the official transcript and the Employer's and Petitioner's exhibits. Photocopies of the Board exhibits 1(a) through 1(d) have therefore been substituted in the official record herein.

at 5151 Harrison St., Butte, Montana. The petition requests a unit of all gas dispatchers and relief gas dispatchers,³ and further seeks a self-determination election to determine whether those employees wish to be represented in Petitioner's existing unit ("Big 44," herein) of about 450 "craft" employees. The Employer opposes the petition on grounds discussed in further detail below.

In prior Case 19-RC-13727, pursuant to a Stipulated Election Agreement, Petitioner was certified on January 20, 1999, as the collective bargaining representative of a unit of all gas dispatchers, excluding all other employees, and guards and supervisors as defined in the Act.⁴ The instant petition was filed on January 21, 2000. At the time of the hearing herein, the Employer employed four gas dispatchers. The Employer and Petitioner have been in negotiations for an agreement covering the gas dispatchers. Such negotiations were on-going at the time of the hearing herein. The record establishes that inclusion – technically, the addition - of the gas dispatchers' unit to Big 44 has been an issue in the current gas dispatchers' negotiations.

Big 44 currently includes all electrical classifications, and all gas classifications engaged in gas services and installation work, in specified counties in Montana. Petitioner has continuously represented such unit since about 1917. From time to time over the years, various groups of employees have been added to the unit by agreement of the parties. The current contract between the Employer and Petitioner covering Big 44 has a term of May 1, 1998 to April 30, 2001.

Prior to the election in Case 19-RC-13727, in addition to the four individuals who were employed as gas dispatchers, there were three persons who worked from time to time as relief gas dispatchers, on an as-needed basis, whenever one of the regular four was on vacation or ill. After the election was held, and throughout 1999, the Employer used only one individual, June Ralph, as a relief gas dispatcher. The Employer contends here that if Ralph is included in the unit, so should the other two relief gas dispatchers be included. It is noted that the parties' Stipulation did not specifically include, or exclude, relief operators.

The record does not reflect why, when stipulating to the 1999 election, the parties did not include a provision for inclusion of the dispatchers in the Big 44 in the event they selected the Union (a so-called "*Globe*" election).

The Employer also has a collective bargaining relationship with Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, CLC (PACE). There is minimal evidence in the record regarding such unit. The Employer contends that the gas dispatchers herein have a greater community of interest with the PACE unit than with Big 44. However, I have been administratively advised that PACE has notified the Region that it has no interest in representing the gas dispatchers or relief gas dispatchers employed by the Employer at this time.

In effect, Petitioner is seeking to accomplish the addition of the represented gas dispatchers and "unrepresented" relief gas dispatchers to Big 44, through a self-determination election, or through a re-vote, this time with a *Globe* provision. The Board has under some circumstances permitted employees to vote on inclusion in an existing unit where a petitioner is seeking to include a group of unrepresented employees. In *Armour and Company*, 40 NLRB 1333 (1942), the representative of an historical

³ The petition names "controllers" rather than "dispatchers;" however, the record establishes that "dispatchers" is the more commonly used term, and is the term used by the parties in a prior case involving the same employees, as discussed below.

⁴ I take administrative notice of said Certification of Representative.

production and maintenance unit sought to represent three separate, appropriate craft units which had been previously represented by three other unions. The Board directed elections among the employees in the three craft units, wherein the employees in voting in favor of the petitioning union indicated their desire to be represented in the overall production and maintenance unit. The Board has also counted votes among “residual” groups of unrepresented employees (which the unit in the original election probably was). In those situations, a Union already represents an overall unit, which happens to exclude some fragmentary group of employees. In simple terms, these employees are permitted a vote, even though their voting *group* is not an appropriate *unit*. If they vote for the established union, they are deemed to be voting to be included in the existing unit.

However, the Board has made it clear that employees are permitted to vote on their unit preference only when simultaneously voting on a bargaining representative. *Southern California Water Co.*, 241 NLRB 771 (1979). To put it another way, a question concerning representation (“QCR”) is a pre-requisite to the filing of an R petition. Here, the Union’s majority status has not been called into question; both sides concede the Union is the current representative. The Union has not disclaimed interest in the certified unit, and then sought representation anew via a new petition which also seeks a *Globe* election.⁵ There is no QCR. *Seven Up Bottling Company of Chico*, 222 NLRB 278 (1976).

It might be argued that the relief operators were excluded from the unit, and that the Union is now seeking a *new* unit, thereby somehow raising a QCR. This argument fails, too. The record is far from clear concerning the inclusion, or exclusion of relief operators. The vehicle to now determine whether they are, or are not, included in the certified unit is a UC petition. Alternatively, the issue could arguably be raised if the Union sought an election among the relief operator(s) to determine if they wanted to be represented *as part of the existing dispatcher unit*.

In conclusion, there is no vehicle to do what the Union seeks, other than mutual consent. The time to raise the inclusion issue was when the original dispatcher petition was filed. For whatever reason, a “contract” regarding unit composition was made via the Stipulation; the die was cast. Since then, nothing has changed other than the Union’s wishes. There is no basis to change a unit under such circumstances.

Therefore, in accordance with *Southern California Water Co.*, 241 NLRB 771 (1979), I shall dismiss the petition. See also, *Raytheon Company*, 918 F.2d 249 (CA 1, 1990) and *Libbey-Owens-Ford Company*, 189 NLRB 869 (1971).

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

⁵ This is not to suggest that such a tactic would “work” for the Union’s purposes; rather, only to note that such an issue is not presented here.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by February 29, 2000.

DATED at Seattle, Washington, this 15th day of February, 2000.

/s/ PAUL EGGERT

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